Statement of Reasons
TITLE 13. MOTOR VEHICLES CODE OF REGULATIONS
ARTICLE 2.55 CALIFORNIA IGNITION INTERLOCK DEVICE PROGRAM

Regulations were enacted in 2002 to provide clarification and make specific Vehicle Code Section 23575. Since that time, recommendations have been received regarding the reorganization of the regulations so that topics are more easily found. Additionally, it was determined that some areas of the previous regulation needed additional clarifying language for the purposes of enforcement and understanding by the industry.

§ 125.00. Definitions.

Previously, a definition of an ignition interlock device was not considered necessary. However, the device is referenced throughout the statutes and the regulations, including regulations of the Bureau of Automotive Repair. The installation, servicing, calibration, monitoring, tampering, and bypassing of the device are mentioned in detail, but the device is not defined. Subparagraph (a) would provide this definition.

Subparagraph (b) would provide a definition of the "alcohol setpoint." The Federal Register definition of alcohol setpoint, includes the following information:

- The breath alcohol concentration (BAC) at which the Breath Alcohol Ignition Interlock Device (BAIID) is set to lock the ignition. It should be noted that the alcohol setpoint is the nominal lockpoint at which the BAIID is set at the time of calibration.
- Ideally there should be no occasions when a person with zero BAC is blocked from starting a vehicle engine due to the interlock. Therefore, to help protect against the response of the alcohol sensor to vapors other than ethyl alcohol, such as tobacco smoke or mouthwash, and the natural production of gases by human subject, some leeway is necessary at the low end. At the other extreme, a BAC of 0.5% weight by volume (w / v) has been shown to produce evidence of behavioral impairment in some individuals, and in some parts of the country (e.g., Colorado and the District of Columbia) 0.05% w / v can be presumptive evidence of impairment and grounds for legal action. The setpoint must be between the limits of .00% and .05%.
- With some known exceptions, use of a 0.025% w / v alcohol setpoint should minimize the possibility that users who have not recently ingested alcohol will have trouble starting their engines.
- The State of California has allowed for a lockpoint at 0.03% w / v, the State of New York has specified a lockpoint of 0.02% w / v. The nominal setpoint in this specification is 0.025% w / v. The value 0.025% w / v is midway between 0 and 0.05% w / v, values which are arguably the extremes under which a vehicle always ought to start and never start, respectively.

Although the Federal Register states that California has established a lockpoint, current statutes and / or regulations make no mention of the California setpoint. The only way to adequately address this situation would be to develop regulations that establish a setpoint.

The amendments to the former subparagraphs (a) and (b) are renumbering to (c) and (d) for consistency and clarity.

Subparagraph (e) is proposed to define a manufacturer of ignition interlock devices. The term manufacturer is used throughout the statutes and the regulations. However, no definition is provided. Therefore, to make the regulations comprehensive, a definition of an ignition interlock device manufacturer is warranted.

Likewise, subparagraph (f) is proposed to add a definition of authorized installer. Many issues have developed because an authorized installer was not defined. The current regulations imply that the authorized installer is the installer of the device, but in actuality the authorized installer is not always the actual person who installs the device. In most cases the authorized installer employs technicians to install the devices. The technicians do not, however, hold accountability for the installation. A definition is necessary to clearly define an authorized installer and clearly define the responsibilities associated with being an installer.

Subparagraph (g) provides a definition of a participant file. A definition was determined to be necessary due to the fact that a participant's file could be maintained either in hard copy or electronic form or a combination thereof. The industry has interpreted what they believe a participant file should contain and in most cases these files are a combination of tangible, hard copy documents and electronic files. However, in order for the participant file to include the required documents provided by DMV and the court, calibration results, installation, servicing, monitoring and removal of the device, it has been determined that a tangible file must be required.

Subparagraph (h) adds the definition of electronic log to the regulation. Because various terms had been used to define the same information, this definition provides clarity. Additional changes have been made in the regulations to ensure consistency.

Subparagraph (i) adds a definition of hardcopy. Previously, the regulations only mention a "copy" when the term hardcopy is applicable. The definition is proposed to communicate precisely what type of copy is being referenced in order to avert any possibility of misunderstanding.

§ 125.02. Certification of Ignition Interlock Devices.

The current regulations require the manufacturer to provide a complete listing of all authorized installers. This section was written with the understanding that each installation location is specifically operated by an authorized installer. This is not the case. Authorized installers must be registered with the Bureau of Automotive Repair (BAR). The BAR license / registration authorizes the use of satellite locations. Therefore, subparagraph (a) (6) is being amended to include satellite locations. Additionally, the requirement to submit changes regarding authorized installers is being relocated to section 125.06 (b).

In subparagraph (a) (11), the term agent is being replaced with authorized installer in order maintain consistency in language and avoid confusion. Additionally, the current regulations mention the fee schedule in two different locations - sections 125.02 (a) (11) and 125.14 (e). For a manufacturer to obtain all the requirements associated with a fee schedule both sections would have to be referenced. This can create confusion on the part of the manufacturer.

Additionally, this section deals with what is required for certification. The language regarding the requirements for the fee schedule has been moved from section 125.14 (e) to subparagraph (a) (11) since section 125.02 pertains to certification requirements. A fee schedule change has no relationship to the requirements for certification. Therefore, the issue of a change of fee schedule is being relocated to subparagraph 125.06 (c).

Since section 125.06 addresses changes, the requirements for changes in the manufacturer's stamp are being relocated from subparagraph (a) (12) to subparagraph 125.06 (d). Additionally, language regarding the requirements for a manufacturer's stamp have been relocated to subparagraph (a) (12) from section 125.14 (c). This is for the purpose of providing the manufacturer and installer with all certification requirements in one location in the regulations.

Subparagraph (a) (13) has been added by relocating the language from section 125.10 (b). The toll free number is an essential departmental requirement for a manufacturer that must be provided when seeking certification. Therefore, it should be in the certification section of the regulations.

The original subparagraph (a) (13) has been renumbered to (a) (14).

§ 125.06. Compliance with Changes in Certification Requirements.

Previously, no specific time period had been identified for compliance with changes to regulations or statute. Subparagraph (a) would add the requirement for manufacturers to comply within 60 days from the date regulations are adopted in order for certification to remain active. Past practice by the department has been to allow companies 60 days to comply with various occupational licensing changes. This timeframe has proven to be large enough for any necessary transition by the affected companies to take place.

Subparagraph (b) is language that was previously located in section 125.02 (a) (6). This language refers to changes on the manufacturer's list of authorized installers. The requirement that an updated list be provided to the department within 10 days has not changed.

Subparagraphs (c) and (d) have been relocated from subparagraphs 125.02 (a) (11) and (a) (12) so that all requirements regarding changes can be located in the same section.

Subparagraph 125.02 (a) (13) requires the manufacturer to provide the department with toll free number. Subparagraph (e) of this section will require the manufacturer to notify the department of any change to this number within 90 days prior to its use. The 90-day timeframe is being established so the department has time to enter the information into its system.

Subparagraph (f) would require the manufacturer to submit an updated application within 30 days of any changes. Section 125.02 (a) (1) requires a manufacturer to provide a completed application for certification purposes. However, there is currently no stipulation regarding changes that may occur to the information contained on the application. Therefore, this section is being proposed to make it a requirement that the department be notified if there are any changes to the information provided on the certification application.

§ 125.10. Referral to an Authorized Installer.

Subparagraph (a) has been amended to clarify the language that would ensure manufacturers are aware of their responsibility in monitoring an authorized installers' compliance with installation procedures.

The requirements formerly at (b) have been relocated to section 125.02 (a) (13).

The information contained in (c) relate more closely to service and maintenance than to referral. Therefore the information contained in (c) has been relocated to section 125.12 (a)

§ 125.12. Service and Maintenance of Ignition Interlock Devices.

The information contained in subparagraph (a) was relocated from subparagraph 125.10 (c), with amendments for clarity of language.

The current language of (a) (1) (A) indicates that when a device is installed, a form DL-920 shall be completed upon installation. However, the form DL-922, "Notice of Removal," has a special section to accommodate a removal and subsequent reinstallation. Therefore, if an installer removes a device from a participant's vehicle and immediately reinstalls the device into another vehicle owned by the same participant, a DL 922 would be completed, not a DL-920. Therefore, the section reference that provides this exception has been included in this subparagraph.

Currently, the first sentence of section 125.12 (a) (3) establishes the interval for servicing ignition interlock devices. However, its significance is lost when combined with other issues contained in this subparagraph. Therefore, this proposal would separate the 60 days interval language into a separate subparagraph, subparagraph (a) (2) (A).

Subparagraph (a) (2) (B) would include the remainder of the language that was previously in subparagraph (a) (3) with the exception of language regarding the participant's failure to maintain the device. This language has been relocated to subparagraph 125.12 (a) (3) (E).

As currently written, subparagraph (a) (4) of this section implies that a hardcopy of the downloaded data is created and placed into the participant's file. However, rarely is that the case. A hardcopy usually entails approximately 50 pages. In most cases, the electronic data is retained electronically and a hardcopy is very seldom created. The downloaded data is reviewed via a summary sheet that is structured to only indicate incidences of non-compliance. If non-compliance is not determined, the electronic data is stored and filed electronically. If non-compliance is indicated on the summary sheet, the download is reviewed in detail electronically (via use of a monitor). If non-compliance is substantiated, a hardcopy is created to serve as the evidence of non-compliance. Based on this information, the subparagraph, as written, is not applicable.

Therefore, subparagraphs (a) (2) (C), (D), (E), and (F) are proposed to remove the language that could be construed to require a complete hardcopy of the downloaded data be placed in the participants' files. Reference to the calibration results have been relocated to section 125.12 (a) (2) (E).

Because the revised language would permit the electronic storage of downloaded data, safeguards need to be established to ensure that oversight is maintained. Therefore, the following safeguards need to occur:

- The electronically downloaded data can be retained manually or electronically;
- If the downloaded data is maintained electronically, a hardcopy of the entire download shall be made available upon request;
- A hardcopy of the summary sheet shall be generated for each download and placed in the participant's file;
- The summary shall include, but not be limited to, each incident the breath alcohol level was at or above the alcohol setpoint, any attempts to bypass or tamper with the device; and
- The summary sheet shall specify the corresponding device and the data the download occurred.

These safeguards have been added to the language at subparagraph (a) (2) (C).

In the previous regulations, issues pertaining to the summary report were not addressed. Subparagraph (a) (2) (D) is amended to require a hard copy of the summary report to be included in the participant's file each time the device is serviced. Subparagraph (a) (2) (E) would also require a hard copy of the calibration results to be included after each servicing of the device.

When an installed device malfunctions and cannot be easily repaired, it is removed and replaced with a functional device to avoid substantial down time. The participant file must include documentation to reflect the removal and replacement of a device via documentation that specifies each device involved and the date the replacement occurred. Subparagraph (a) (2) (F) would add this requirement. When a participant's file is inspected and a summary report indicates a different device, other than the one originally installed, the participant file should reflect the transfer. The required documentation would avert any concerns an inspector or auditor might have regarding unscrupulous conduct. This subparagraph differs from (a) (1) (A) because (a) (1) (A) is the transfer of a device from one vehicle to another vehicle (same device). This subparagraph refers to replacement of the device.

Subparagraph (a) (2) (G) was formerly subparagraph (a) (2) (A). This is a non-substantive change that would simply renumber existing language.

While the majority of subparagraph (a) (2) (H) reflects a non-substantive renumbering amendment, an additional requirement is proposed to allow documentation provided by the participant to explain missing a scheduled service period to be placed in the participant's file. This would produce a valid paper trail relating to the service and maintenance of the ignition interlock device.

The requirements currently in subparagraph (a) (2) (C) would be moved to subparagraph (a) (3) (F).

Due to the proposed reorganization of section 125.12, subparagraph (a) (5) of the current regulations would be renumbered to become subparagraph (a) (3). This would create a subparagraph focused on non-compliance issues. Additionally, to make the subparagraph comprehensive, replacement of a device would be added as a circumstance in which to conduct a tamper inspection.

Subparagraph (a) (3) (A) would add a preface stating the purpose of the paragraph.

The proposed amendments to subparagraph (a) (3) (B) are for the purpose of language clarity and uniformity.

The language in subparagraph (a) (3) (E) has been relocated from existing subparagraph (a) (3).

The language in subparagraph (a) (3) (F) has been relocated from existing subparagraph (a) (3) (C). The requirement to include a copy of forms submitted to the court in the participant's file has been added in order to maintain a complete record of all activity.

Subparagraph (b) would be amended to delete reference to specific court forms because the titles of the forms could change based on the municipality of the court. However, language has been added which reflects that the "appropriate court forms" should be used. This allows the courts the necessary flexibility to establish their own forms and procedures.

Subparagraph (c) (1) is being amended to provide uniformity and clarity in the language.

Manufacturers are required to ensure continued service for the participants in most cases. Subparagraph 125.12 (c) clarifies that this requirement continues when a participant is transferred from one of the manufacturer's authorized installers to an installer that is affiliated with another manufacturer.

Subparagraphs 125.12 (c) and (c) (1) discuss the transferring of participants from one authorized installer to another.

Additional information is being provided regarding the actual transfer of a participant to another manufacturer. Therefore, subparagraphs (c) (1), (c) (2), (c) (3), and (c) (4) are proposed to assist manufacturers, while ensuring the integrity of the program and the participant's file.

Subparagraphs (d), (d) (1), and (d) (2) discuss the manufacturer's responsibility for continuing service in the event the participant wishes to transfer to a different authorized installer or manufacturer.

§ 125.14. ~~Facilities and Records~~. Installation Locations and Participant Files.

The department is proposing to rename Section 125.14. Instead of Facilities and Records, it would be Installation Locations and Participant Files. The use of "facilities and records" is no longer applicable due to the recommended regulatory changes. For clarity, consistency, and uniformity throughout the regulations "installation locations" should replace the use of facilities and "participant files" should replace the use of "records."

Subparagraph (a) is being added to address the use of mobile units and satellite locations. The Bureau of Automotive Repair permits the use of mobile units and satellite locations. However, the current regulations do not make any reference regarding their acceptability or use. Because of the lack of information in the regulations, controversy has arisen within the industry. Therefore, to avert further controversy, the regulations would be amended to clarify the use of mobile and satellite locations.

Subparagraph (b) is an amendment to the current subparagraph (a). Additionally, this subparagraph contained two major issues related to participant files – what is to be in the participant file and that a participant file is to be retained for five years. However, the current

regulation does not state that the authorized installer is responsible for creation of the participant file. The proposed amendment would make this requirement clear. The information regarding the retention period of the participant file would be relocated to subparagraph (f) of this section.

Subparagraph (c) (formerly subparagraph (a) (1)) would be modified for language consistency and to include the clarifying statement that the copies be included in the participant file.

Subparagraph (a) (2) would be deleted. This section is redundant. Section 125.16 discusses the DL 920 including the retention period.

Subparagraph (a) (3) would be deleted. This section is also redundant. The form DL 921 is discussed in 125.18 including the retention period.

Subparagraph (a) (4) would be deleted. The form DL 922 is discussed in Section 125.20.

Subparagraph (a) (5) would be deleted. Subparagraph 125.12 (a) (3) (B) discusses the requirements associated with non-compliance and the documentation thereof.

Subparagraph (a) (6) would be deleted. Subparagraph 125.12 (a) (2) (F) has been proposed to provide for the transferring of a device to ensure that if an installed device is replaced with another device, the event is documented, the documentation specifies each device, and the documentation is included in the participant's file. Therefore, subparagraph (a) (6) is redundant.

Subparagraph 125.12 (2) (H) proposed an amendment to include copies of documentation verifying extenuating circumstances requiring extension of the 60-day service requirement in the participant's file. Therefore, subparagraph (a) (7) of this section is redundant and would be deleted.

The requirement that manufacturers ensure installers meet all Bureau of Automotive Repair requirements has been addressed in section 125.10 (a). Therefore, subparagraph (b) would be deleted.

Currently, regulations discuss the manufacturer stamp in sections 125.02 (a) (12) and 125.14 (c) and a manufacturer would have to reference both sections to obtain all information regarding the stamp. Therefore, the information contained in subparagraph (c) has been added to 125.02 (a) (12) and subparagraph (c) would be deleted.

Subparagraph (d) addresses two separate issues: obtaining copies of the participant's files; and inspection of both the authorized installer's files and the authorized installer's installation locations. Because these two issues are combined, the importance of each is diminished. Therefore, subparagraph (d) would be devoted to the department's authority to obtain copies of the participant's file. The inspection information would be included in amended subparagraph (e).

The current subparagraph (e) would be deleted. The fee schedule would be addressed in subparagraph 125.02 (a) (11).

The amended subparagraph (e) would include the authority for the department to inspect participant files or the installation location. This information would be relocated from subparagraph 125.14 (d).

Subparagraph (f) would contain the requirement that the participant's file be maintained for a minimum of 5 years after removal of the device. This language would be relocated from subparagraph (a) above.

§ 125.16. Verification of Installation.

Subparagraph (a) would contain non-substantive capitalization amendments.

Throughout the proposed amendment, "facility" has been replaced with "location." This is again true in subparagraph (a) (7).

The "Verification of Installation" form DL 920 (New 11/99) is a controlled form. As such, the manufacturers are required to account for all forms issued to them. Currently, however, accountability requirements are addressed in an "Industry Memo" only. The regulations need to include the provisions regarding accountability and what to do should a form(s) become lost, stolen, or misplaced. Therefore, language would be added at subparagraph (c) to include these provisions.

The amendments to subparagraphs (d) and (d) (1) add the revision date of the forms.

Subparagraph (d) (2) would be amended to include clarifying language to ensure the "authorized" installer places a copy of the Verification of Installation into the participant's file. The phrase "if applicable" would be added to the language because sending copies to the manufacturer or the manufacturer's agent, while not common practice, can be requested by the manufacturer.

§ 125.18. Notice of Non-Compliance.

In the original regulations, the time limit of "within three working days" was not included in the language. The timeframe is an essential requirement of the program. Therefore, subparagraph (a) would be amended to include the timeframe. Additionally, the word "form" would be added because the term is included throughout the regulation and should be included for uniformity.

The revision date of the DL 921 was not included throughout the original regulation. Including the date is a requirement of the Administrative Procedure Act, and it would be added in this amendment. This would also be true for subparagraphs (b) and (b) (1).

Subparagraph (a) (6) would be amended to change the word "facility" to "location" since this is the term used throughout the regulation.

Subparagraph (b) (2) would be amended to include clarifying language to ensure the "authorized" installer places a copy of the Verification of Installation into the participant's file. The phrase "if applicable" would be added to the language because sending copies to the manufacturer or the manufacturer's agent, while not common practice, can be requested by the manufacturer.

§ 125.20. Notice of Removal.

In the original regulations, the time limit of "within three working days" was not included in the language. The timeframe is an essential requirement of the program. Therefore, subparagraph (a) would be amended to include the timeframe. A non-substantive capitalization change would also be added.

The revision date of the DL 922 was not included throughout the original regulation. Including the date is a requirement of the Administrative Procedure Act, and it would be added in this amendment. This would also be true for subparagraphs (a), (c), and (c) (1).

Subparagraphs (a) (7) and (a) (8) would be deleted. Section II of the "Notice of Removal" has been designed to handle a situation that occasionally occurs. However, because the issues related to Section II were discussed in two separate subparagraphs, the subject matter became unclear and confusing. In the interest of clarity, subparagraphs (a) (7) and (a) (8) would be combined into a new subparagraph (a) (7) (A) and (a) (7) (B) so the issue being explained would become more comprehensible.

Because subparagraph (a) (8) has been deleted, subparagraphs (9) through (13) under subparagraph (a) would require renumbering.

The "Notice of Removal" form DL 922 (New 11/99) is a controlled form. As such, the manufacturers are required to account for all forms issued to them. Currently, however, accountability requirements are addressed in an "Industry Memo" only. The regulations need to include the provisions regarding accountability and what to do should a form(s) become lost, stolen, or misplaced. Therefore, language would be added at subparagraph (b) to include these provisions.

Subparagraph (c) (2) would be amended to include clarifying language to ensure the "authorized" installer places a copy of the Verification of Installation into the participant's file. The phrase "if applicable" would be added to the language because sending copies to the manufacturer or the manufacturer's agent, while not common practice, can be requested by the manufacturer.

§ 125.22. Notice to Employers Regarding an Ignition Interlock Restriction.

A minor capitalization correction is proposed for subparagraph (a).

The revision date of the DL 923 was not included throughout the original regulation. Including the date is a requirement of the Administrative Procedure Act, and it would be added to subparagraph (b).